U.S. Senate
Republican Policy Committee

Legislative Notice

Jon Kyl, Chairman

No. 33 July 23, 2003

S. 1416 – United States-Chile Free Trade Agreement Implementation Act

Calendar No. 222

S. 1416 was jointly reported without amendment by the Committees on Finance and the Judiciary on July 22, 2003, by a vote of 11-4 in Judiciary (voting nay were Senators Sessions, Kohl, Feinstein, and Feingold) and by a 21-0 vote in Finance; no written report at this time.

NOTEWORTHY

- S. 1416 would implement the June 6, 2003 Free Trade Agreement between Chile and the United States.

- Along with the U.S.-Singapore Free Trade Agreement, the U.S.-Chile trade agreement will be the first trade pact to move under a fast-track procedure known as Trade Promotion Authority (TPA), which was restored as part of the Trade Act of 2002 (P.L. 107-210). Previously, fast-track authority for the President had lapsed, last being utilized in 1994 by President Clinton.

- Under TPA, the President negotiates trade agreements and then submits them to Congress for expedited consideration. Congress can only approve or reject the implementing bills, not amend them.

- On July 21 and 22, the House Committees on Ways and Means (by a vote of 33-5) and Judiciary (unanimous vote), respectively, reported H.R. 2738, the House Chile FTA implementation measure. The House is expected to vote on this measure this week.

Highlights

- On December 6, 2000, the United States and Chile began negotiation of a bilateral free trade agreement (FTA).
- On December 11, 2002, the Administration announced the successful completion of the FTA following 14 rounds of negotiations.
- On June 6, 2003, U.S. Trade Representative Robert Zoellick signed the agreement on behalf of the United States, and thereafter the Administration informally submitted draft implementing language to Congress for its review.
- Chile will be the fifth country to have a free trade agreement with the United States, joining Canada, Mexico, Israel, and Jordan.
- In 2002, Chile was the 34th largest destination of U.S. exports and the 36th largest source of imports into the United States.
- The U.S.-Chile FTA is the first U.S. free trade agreement between the United States and a South American nation.
- FTA negotiations focused on such issues as tariffs, market access, services trade, trade remedies, intellectual property rights, electronic commerce, investment, transparency, labor, and the environment.
- Under this FTA, more than 85 percent of two-way trade in consumer and industrial products becomes tariff-free immediately, with most remaining tariffs eliminated in four years.
- More than three-quarters of U.S. farm goods will enter Chile tariff-free within four years. All tariffs are phased out within 12 years.
- The National Association of Manufacturers estimates that the lack of a FTA with Chile has cost U.S. exporters $800 million per year in sales, affecting 10,000 jobs.
- The University of Michigan and Tufts University estimate that the FTA will expand U.S. GDP by $4.2 billion, and Chilean GDP by $700 million.
- According to a June 2003 study by the U.S. International Trade Commission (ITC) on the effects of this FTA on the U.S. economy, U.S. exports to Chile would increase in a range of between 18 percent and 52 percent, and U.S. imports would rise between 6 percent and 14 percent once tariffs are fully eliminated in 2016.

Background

Committee Action: Under the TPA procedures, the Committees may not amend the implementing bills. On July 10, the Senate Finance Committee conducted an informal public review of the draft implementing language submitted by the Administration.

The Judiciary Committee has jurisdiction over the immigration and visa provisions in the bill. On July 14, the Senate Judiciary Committee held a hearing on the Chile and Singapore FTAs, focusing on provisions relating to the temporary entry of professionals. At that time, several Judiciary members from both sides of the aisle reported concerns with the related provisions in the bill (their concerns are addressed on p. 5 of this Notice).

On July 17, the Committee on the Judiciary and the Committee on Finance both ordered the bill reported favorably without amendment. In Judiciary, the vote was 11-4 (with Senators Sessions, Kohl, Feinstein and Feingold voting nay) and in Finance, the vote was unanimous.

Chile. During the past decade and since the Chilean people threw off the cloak of military dictatorship in 1990, Chile has embraced democratic and free market reform, and has had one of the strongest economies in the Americas. Growth in real GDP averaged 8 percent during 1991-97. And, after implementing tight monetary policies and experiencing a slowdown in economic growth during the late 1990s global recession, Chilean GDP has rebounded in recent years to an average growth rate of more than 5 percent.

According to the U.S. State Department's May 2003 country report on Chile, Chile's economy is "highly dependent on international trade." In 2002, exports accounted for about 27 percent of Chilean GDP. Successive Chilean governments have actively pursued liberalizing trade agreements. During the 1990's, Chile signed FTA's with Canada, Mexico, and Central America. Chile also concluded preferential trade agreements with Venezuela, Colombia, and Ecuador. An association agreement with Mercosur – Argentina, Brazil, Paraguay, and Uruguay – went into effect in October 1996.

In addition to its economic successes, Chile has made dramatic progress in undertaking political, social, and legal reforms. The U.S. State Department and numerous non-governmental organizations, such as Freedom House and Amnesty International, have praised the Chilean government for its human rights and democratic practices. Passage and implementation of this FTA is very much a recognition by the Bush Administration and Congress of the great achievements Chile has made in moving from a military dictatorship under General Augusto Pinochet to a flourishing democracy under popularly elected leaders.

Negotiations. Bilateral negotiations between the U.S. and Chile on a FTA began on December 6, 2000. The 14 rounds of negotiations were brokered by the office of the U.S. Trade Representative (USTR) in coordination with Congress. The negotiations focused on such issues as tariffs, market access, services trade, trade remedies, intellectual property rights, electronic commerce, investment, transparency, labor and the environment. On December 11, 2002, negotiations on the FTA were completed. On June 6, 2003, the United States and Chile signed the agreement in Miami.

Negotiating a Free Trade Agreement with Chile has been one of the staples of the Bush economic agenda. In 2002, Chile was 34th largest destination of U.S. exports and the 36th largest source of imports into the United States. Until recently, the United States ranked as the leading source of imports into Chile. In 2001 and 2002, the United States fell to number 2, behind Argentina. More than 85% of two-way trade in consumer and industrial products becomes tariff-free immediately, with most remaining tariffs eliminated in 4 years. More than three-quarters of U.S. farm goods will enter Chile tariff-free within 4 years, with all tariffs phased out within 12 years. According to a June 2003 study of the U.S. International Trade Commission (ITC) on the effects of this FTA on the U.S. economy, the ITC found that, once tariffs were fully eliminated in 2016, U.S. exports to Chile would increase in a range between 18 percent to 52 percent, and U.S. imports would rise between 6 percent to 14 percent.

TPA. This agreement, along with the U.S.-Singapore FTA, will be the first free trade pact agreed to under the newly-restored Trade Promotion Authority (TPA) that Congress granted the President on August 1, 2002 (and which the President signed into law on August 6, 2002, as part of the Trade Act of 2002, Public Law 107-210).

TPA permits the President to negotiate good trade deals that open markets, increase choices, and lower costs for American farmers, workers, consumers, and businesses. TPA also gives the President the flexibility to seize any trade opportunity, without compromising American sovereignty or slipping into protectionism.

Congress, however, maintains a say in free trade agreements. Under TPA, the President works with Congress throughout the course of trade talks both on the conduct of trade negotiations and in the implementation of any resulting agreement. In addition to this ongoing right of involvement, Congress preserves its ultimate role in determining whether the results serve the long-term interests of the United States by participating in the formulation of the implementing legislation and then voting on the resulting agreement and its implementing bill.

CAFTA and FTAA. A U.S.-Chile FTA is also a key component in helping to advance President Bush's twin goals of developing multilateral free trade pacts through the negotiation and passage of a U.S.-Central America free trade agreement (CAFTA) and a Free Trade of the Americas Agreement (FTAA). The FTAA would include 34 nations (all the democracies) of the Western Hemisphere. The President has indicated that he would like to see an FTAA completed by 2005.

National Security. Lastly, the Bush Administration believes that free trade is one of the key instruments the United States can employ in helping to bolster economic prosperity, promote democratic consolidation, and provide for U.S. security. As stated in the September 2002 National Security Strategy document:

> A strong world economy enhances our national security by advancing prosperity and freedom in the rest of the world. Economic growth supported by free trade and free markets creates new jobs and higher incomes. It allows people to lift their lives out of poverty, spurs economic and legal reform and the fight against corruption, and it reinforces the habits of liberty.

Items for Discussion

Several matters included in the U.S.-Chile Free Trade Agreement Implementation Act have raised concerns by some Members of Congress. Some of their concerns include the following:

- ***Immigration (temporary entry for business persons)***. Senator Feinstein has led a bipartisan charge criticizing the Administration for rewriting U.S. immigration policy via this FTA. Senator Feinstein and others argue that, under Title IV of S. 1416 (or Chapter 14 of the FTA), routine renewals for the temporary entry of business and professional visitors would be allowed. They contend that only Congress, and not the executive branch, has the authority to change immigration laws. On July 16, Senators Feinstein, Sessions, and Graham sent a letter to President Bush requesting that he "renegotiate or reconfigure the trade agreements without the immigration provisions, and retransmit a new version of the implementing legislation to Congress."

  In addition, during consideration of the entry provisions in the Judiciary Committee on July 17, several Senators, including Senators Kyl, Chambliss, and Graham, all of whom voted to favorably report the bill, were also highly critical of the USTR's insistence that substantive immigration provisions be included in these underlying trade treaties and, subsequently, their implementing legislation. They have all asked for a commitment from the USTR that future trade agreements stick to the issues of trade policy, not immigration policy.

  USTR maintains that the temporary entry of professionals falls within TPA objectives regarding the opening of foreign country markets for U.S. services and investment, in particular reduction or elimination of barriers that restrict the operation of service suppliers or the establishment or operation of investments. (For further detail on this issue, see CRS report, "Immigration Issues in the Free Trade Agreements," http://www.congress.gov/brbk/html/ebtra135.html or the USTR fact sheet, "Chile and Singapore FTAS: Temporary Entry of Professionals," http://www.ustr.gov/new/fta/Chile/2003-07-21-temp_entry.pdf).

- ***U.S.-Chile and Singapore FTAs as a "Template."*** Following the signing of the U.S.-Chile agreement in December 2002, USTR Zoellick stated that this bilateral agreement should could serve as a model or "template" for CAFTA and other multilateral agreements. Currently, the USTR is engaged in discussions and negotiations with numerous countries (Australia, Bahrain, the nations of Central America, nations of Southern Africa, and the 34 democracies of North and South America) interested in signing bilateral and multilateral free trade agreements. Rep. Sander Levin (D-MI) has been a vocal critic of the suggestion that templates will be used for future bilateral and multilateral FTAs. During the House Ways and Means Trade Subcommittee markup on July 17, Rep. Levin stated that the CAFTA agreement should not parallel the Chile FTA because labor and environmental conditions differ. He and other Members have argued that agreements with each country or region should be negotiated on the basis of the specific qualities and constraints evident in each particular country or region.

Bill Provisions

Title I - Approval Of, and General Provisions Relating to, the Agreement

This title approves the Agreement and establishes the regulatory authority for the President to implement the Agreement. The seven sections of Title I clarify the relationship between the Agreement and Federal and State law, authorize the President to establish an office to provide administrative assistance to dispute settlement panels, set forth consultation and layover requirements that must precede the President's implementation of any tariff modification by Proclamation, and cover various other provisions relating to the approval of the Agreement.

Title II - Customs Provisions

This Title authorizes changes to U.S. customs law in order to implement the Agreement.

- **Sec 201 - Tariff Modifications**: This section authorizes the President to modify, continue, eliminate, or establish duties as are necessary or appropriate to carry out the terms of the Agreement.

- **Sec 202 - Rules of Origin**: This section establishes rules of origin, meaning that it defines where goods must originate in order to be covered under the Agreement. For instance, goods that are wholly produced in Chile are covered, while goods that are simply combined or packaged in Chile are not. Rules also cover inputs into final products, spare parts, and other origination issues. This section also authorizes the President to modify certain rules of origin, subject to consultation and layover provisions.

- **Sec 203 - Drawback**: This section implements Article 3.8 of the Agreement, which phases out duty drawback and duty deferral programs between the United States and Chile over a three-year period commencing eight years after the Agreement enters into force.

- **Sec 204 -Customs User Fees** : This section eliminates the merchandise processing fee for originating goods under the Agreement.

- **Sec 205 -Disclosure of Incorrect Information; Denial of Preferential Tariff Treatment; False Certificates of Origin**: This section states that an importer shall not be subject to penalties for mistakenly claiming that a good qualifies as an originating good if the importer voluntarily makes a corrected declaration and pays any duty owing. It also establishes penalties for a pattern of abuse.

- **Sec 206 - Reliquidation of Entries**: This section gives importers one year from importation to claim preferential tax treatment under the Agreement.

- **Sec 207 - Recordkeeping Requirements**: This section sets forth certain recordkeeping requirements. For instance, any person who issues a Chile FTA Certificate of Origin must keep a copy for five years.

- **Sec 208 - Enforcement of Textile and Apparel Rules of Origin**: This section allows the Treasury Secretary to take "appropriate action" during a verification conducted to enforce textile and apparel rules of origin – such action includes suspending importation of certain goods while the government of Chile verifies whether the claims of origin of a Chilean exporter or producer are accurate.

- **Sec 209 & 210 - Conforming Amendments & Regulations**: These sections modify the Tariff Act of 1930 to reflect changes introduced in this Agreement, and authorize the Secretary of the Treasury to prescribe regulations necessary to carry out the Agreement.

Title III - Relief From Imports

This Title establishes import safeguards.

- **Subtitle A (Sec 311-316) - Relief from Imports Benefitting from the Agreement**: This subtitle allows safeguard duties to be imposed on Chilean imports if they cause or threaten to cause "serious injury" to domestic industry producing a competitive article. The subtitle establishes various guidelines and timetables for such a process. For instance, safeguard relief for a specific article cannot extend for more than three years, and no safeguard relief shall be available 10 years (or in some cases, 12 years) after the date the Agreement enters into force. The Subtitle also allows the President to provide trade compensation to Chile if safeguard relief is imposed.

- **<u>Subtitle B (Sec 321-328) - Textile and Apparel Safeguard Measures</u>**: This subtitle allows duties to be imposed on Chilean textile or apparel imports if they cause or threaten to cause "serious damage" to domestic industry producing a competitive article. The subtitle establishes various guidelines and timetables for such duties to be imposed, and directs the President to examine various economic factors, such as output, market share, and wages in determining whether serious damage exists. Relief may not exceed three years, and no import relief shall be available eight years after duties are eliminated under the Agreement. The subtitle also allows the President to provide trade compensation to Chile if textile and apparel safeguard relief is imposed.

Title IV - Temporary Entry of Business Persons

This Title provides for the cross-border mobility of professionals and other business persons. Specifically, the title requires that an FTA professional non-immigrant have "specialized knowledge" of an occupation in order to receive temporary entry into the United States. A limit of 1,400 non-immigrant visas per year is established, and non-immigrants shall be admitted for one year; this may be extended in one-year increments. There is no limit to the number of extensions, though after five consecutive extensions each subsequent extension of an FTA non-immigrant visa is counted against the annual cap on professional visas provided for in Section 214 of the Immigration and Nationality Act. The title also provides wage and employment requirements for the employer while the FTA non-immigrant is in the United States. For instance, the non-immigrant must receive at least the prevailing wage level for his/her occupation in the area of employment. The title establishes a process for investigating violations of these requirements and establishes penalties if such violations are found.

Cost

CBO estimates that implementing the U.S.-Chile Free Trade Agreement would reduce revenues by $5 million in FY2004 and by $39 million over the FY2004-2008 period. Additionally, implementing the Agreement would yield a net increase in mandatory spending of less than $500,000 per year. Lastly, spending subject to appropriation would likely be about $500,000 in FY2004 and $3.1 million over the FY2004-FY2008 period.

Administration Position

While no formal Statement of Administration Policy (SAP) has been released on S. 1416, the Administration has expressed repeatedly that it strongly supports passage of the U.S.-Chile Free Trade Agreement Implementation Act. In its SAP for H.R. 2738, the House version of the S. 1416, the Administration stated the following:

"The Administration strongly supports H.R. 2738, which will implement the U.S.-Chile Free Trade Agreement (FTA), as signed by the United States and Chile on June 6, 2003.

The U.S.-Chile FTA advances U.S. national economic interests and meets the negotiating principles and objectives set out by Congress in the Trade Act of 2002. It provides increased market access for American goods and services in Chile, and it provides lower-cost U.S. producer and consumer access to Chilean goods and services in a manner that is not disruptive to the U.S. economy.

This agreement successfully incorporates new approaches to rules pertaining to e-commerce, procurement, investment, and other areas that were articulated in the Trade Act of 2002. It reduces barriers for services, protects leading-edge intellectual property, keeps pace with new technologies and new ways of doing business and ensures regulatory transparency. The agreement also opens long-restricted markets for U.S. beef and pork, as well as eventually eliminating the restrictions affecting U.S. wheat exports.

The U.S.-Chile FTA sets the standard in Latin America for progressively opening other countries' economies and points the way to a hemisphere united by economic opportunity, freedom, the rule of law, and democracy. It levels the playing field for U.S. businesses that have been forced to compete with companies from Europe and elsewhere that have enjoyed favored market access in Chile."

Possible Amendments

Under Trade Promotion Authority, no amendments to this bill are permitted.

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